

AJUMOGOBIA & OKEKE

Nigerian Banking & Finance Sector:

**Legal & Regulatory
Overview (2015)**





OVERVIEW

The Largest Economy in Africa

A GDP of US\$510 billion makes Nigeria the 26th largest economy in the world and the largest in Africa. The rebasing of Nigeria's GDP saw the country's debt-to-GDP ratio fall to 11 per cent from 19 per cent. Foreign financial institutions, investors, service providers and the Nigerian banks themselves can only be expected to take advantage of the attractive financial and other opportunities presented in various sectors of a fast-growing economy.



Largest Economy in Africa with \$510bn, 26th Largest in the World

Source: McKinsey & Company Report July 2014

A Healthier Banking system

Nigerian banks are much healthier and stronger than in the tumultuous period of the 2008-09 crisis in Nigeria's financial sector. Customers withdrew their money and the banks' deposit ratios deteriorated. This drove up the cost of funding and combined with exposure to the sharp losses in the domestic capital markets resulted in many banks facing a liquidity crunch or outright insolvency. In addition, by 2009, huge toxic assets had been discovered on bank

balance sheets. It is only the timely and drastic banking reforms instituted by the CBN that helped rescue the industry by raising minimum capital thresholds, forcing mergers, writing off unprofitable businesses and cleaning up bad loans. The number of banks was slashed from eighty nine to twenty one. As a result of the sweeping reforms, all pre – 2008 bank CEOs have been replaced across the entire sector and an open forensic audit has been conducted on all the country's banks. This is a remarkable regulatory achievement by any standards.

Cashless Nigeria

The rise of e-banking also reflects a notable transformation in Nigeria's financial sector. The Central Bank of Nigeria (CBN) has deliberately and systematically promoted the use of cashless transactions with the goal of increasing efficiency, minimising costs and increasing transparency.

REGULATORY FRAMEWORK



Key Laws & Regulations:

- **Companies and Allied Matters Act, (CAMA)** - Banks operating in Nigeria are corporate bodies that must be incorporated as a company in compliance with the requirements of the CAMA.
 - **The Banks and Other Financial Institutions Act (BOFIA)** prescribes that all banks must possess a valid banking licence issued under the Act.
 - **The Central Bank of Nigeria (CBN) Act** - established the Central Bank of Nigeria as the body with regulatory and supervisory power over the banking system.
 - **The Asset Management Corporation of Nigeria (AMCON) Act 2010** - The creation of AMCON was the first step towards easing the burden of over N3.0 trillion of non – performing loans in the banking sector. Thanks to AMCON, over USD \$35 billion worth of bad loans have been siphoned from the sector.
 - **The Central Bank of Nigeria (CBN)'s Regulations on Scope of Banking Activities & Ancillary Matters, No 3, 2010** (Regulation 3 of 2010) repealed the erstwhile Universal Banking Licence regime and modified the scope and framework for banking business in Nigeria.
 - **The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.**
This Act establishes an Autonomous Foreign Exchange Market and provides for the monitoring and supervision of transactions conducted in the market.
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FOREIGN OWNERSHIP



Non-Nigerians can invest

FDI is permitted in the Nigerian banking sector. Foreign banks or investors are allowed to establish banking business in Nigeria provided that they meet the current minimum capital requirement of N25 Billion and subject to compliance with other regulatory requirements prescribed by the CBN. Foreign banks or investors are also permitted to invest in existing Nigerian banks subject provided that, unless specifically approved, no single foreign investor acquires more than the shares of the single largest Nigerian institutional or individual shareholder and that the aggregate shareholding of the foreign investors does not exceed 10% of the total capital of the bank. Under the provisions of BOFIA, Where the acquisition of shares results in a change of ownership or control of the bank the prior approval of the CBN must be obtained for any investor in a Nigerian bank, whether Nigerian or foreign.

It is important, as background information on the general foreign investment rules in Nigeria, to note the Nigerian Investment Promotion Commission (NIPC) Act has largely abolished any restrictions on foreign shareholding in Nigerian companies save for the restricted industries which are:

- Production of arms and ammunition;
- Production of and dealing in narcotic drugs and psychotropic substances;
- Manufacture of military/paramilitary wears and accoutrements;
- Participation in coastal and inland shipping.

Unconditional transferability of Funds

Under the NIPC Act it is specifically stated that:

- A non-Nigerian may invest and participate in the operation of any enterprise in Nigeria;
- An enterprise, in which foreign participation is permitted, shall after its incorporation or registration, be registered with the NIPC;
- A foreign enterprise may buy the shares of any Nigerian enterprise in any convertible foreign currency.
- A foreign investor in an approved enterprise is guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, be it:
 - (a) dividends or profit (net of taxes) attributable to the investment;
 - (b) payments in respect of loan servicing where a foreign loan has been obtained.
- The remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation

of the enterprise or any interest attributable to the investment;

- Total repatriation of capital should the investor choose to relocate elsewhere.

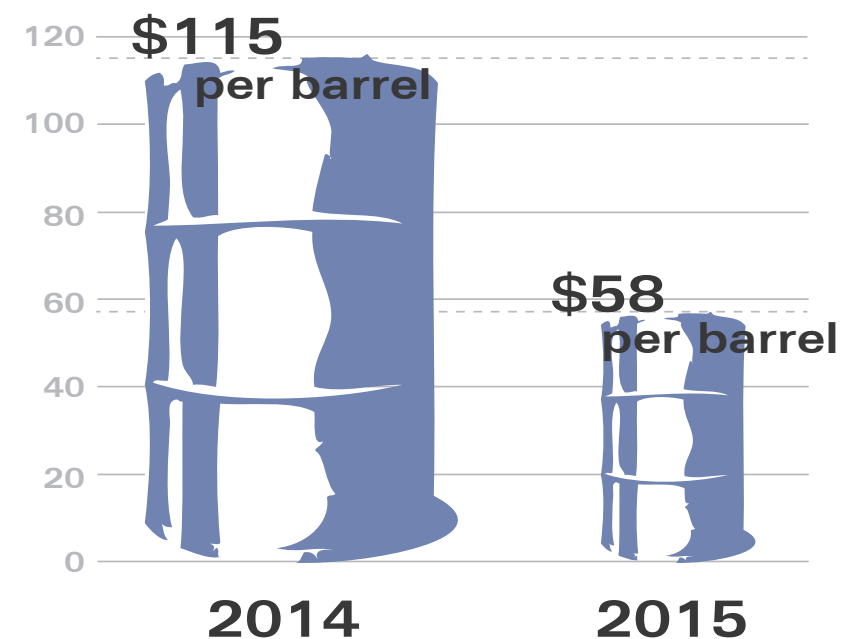
Constitutional guarantee against expropriation

Furthermore Section 44 of the Constitution of the Federal Republic of Nigeria provides a guarantee to all persons against expropriation of any moveable property or interest in an immoveable property.

Banks with foreign ownership

The sector's margins and profitability have continued to attract interest from overseas. Some Nigerian banks with foreign ownership include, Citibank, Union Bank Plc, Stanbic IBTC Bank Plc (member of the Standard Bank Group), Ecobank Plc, Standard Chartered Bank Plc etc. In the case of Union Bank Plc, Atlas Mara which specialises in buying African banking assets worldwide recently took an increased stake, by the injection of USD\$270m to increase its stake in that bank from approximately 9% to just under 30%. Another example is Rand Merchant Bank, a division of South Africa's First Rand Bank which specialises in investment banking, fund management, private wealth management and advisory services which set up shop in Nigeria in 2013.

CHALLENGES



Fall in price of oil from \$115 in June 2014 to \$58 in April 2015

Source: IMF 2015 World Economic Outlook

Exchange Rate Stability /Oil Price Volatility

The drop in global benchmark oil prices has impacted negatively on government revenues and the value of the naira. Due in part to these factors, the World Bank recently revised its prediction for the country's economic growth in 2015 down from 6.3% to 5.5%.

CBN which had kept its benchmark monetary policy rate at 12% since October 2011, raised interest rates to 13% in November 2014 following pressure from plummeting oil prices late in the year. The same month saw a more than 8% devaluation of the naira against the dollar from \$1: N155 to \$1: N168. By late February 2015, another de facto devaluation occurred with dollar sales effectively fixed at \$1: N198, for a nearly 30% loss in value in a period of three months.

Increasing the flow of Credit to the Real sector/Small and Medium Scale Enterprises

The outcome of the banking consolidation was expected to deliver advantages of scale thereby boosting growth in the real economy through the provision of credit, especially to small and medium scale enterprises. This expectation has not been realised. It is estimated that less than 0.5% of the population has real access to credit from the banking sector.

This is a challenge but also an opportunity for the expansion of the banking system to cover more of the country's rapidly growing population.

Bank Fraud and Cybercrime

This is a growing concern and is arguably more rampant in banking than other sectors of business in Nigeria. The FITC report on Frauds and Forgeries in Banks, reported that between January and September 2014, a total of 8,502 cases of fraud were perpetrated in the banking sector. The total amount of money involved was N23.34 billion, out of which N3.01 billion was actually lost.

N20.33 billion of the total amount involved was recovered through the collective efforts of banks' internal and external control techniques as well as intervention of the law enforcement and anti-graft agencies. There are a number of draft bills pending, that seek to curb the menace of fraud and corruption. Some of the bills propose to grant additional powers to agencies such as the Economic and Financial Crimes Commission to investigate, prosecute and confiscate the proceeds of crime or corruption, (particularly as regards state assets) making full use of the international criminal justice and civil recovery systems currently in place.

RECENT DEVELOPMENTS



- **The Nigerian Mortgage Refinance Company**

The NMRC, which was established June 2013, is a key component of the Nigeria Housing Finance Programme which was initiated by the Federal Ministry of Finance (FMOF), the Central Bank of Nigeria (CBN), Federal Ministry of Lands & Urban Development & Housing and the World Bank/IFC, with the principal objective of addressing the long-term funding constraints hindering the growth of the primary mortgage market, and reducing the costs of residential mortgages and available housing to working Nigerians. NMRC is a public private partnership arrangement between the Federal Government of Nigeria and the private sector.

- **The Development Bank of Nigeria**

In 2015 the FGN in partnership with the World Bank and the African Development Bank, established a self-sustainable, wholesale development finance institution known as the Development Bank of Nigeria. The main aim of the bank is to develop the financial sector by providing medium and long term funds to intermediaries (commercial banks,) and to increase lending to Micro, Small, and Medium Enterprises and Agricultural business, thereby contributing to economic diversification.

- **Real Sector Support Fund**

The Central Bank of Nigeria in a bid to unlock the potential of the real sector to engender output growth, value added productivity and job creation has established a N300 billion Real Sector Support Facility (RSSF). The Facility will be used to support large enterprises for start-ups and expansion financing needs. The real sector activities targeted by the Facility are manufacturing, agricultural value chain and selected service sub-sectors. In June 2015 the CBN approved

OPPORTUNITIES





Nigeria can more than triple GDP by 2030

Source: McKinsey & Company Report July 2014

Power

The overhaul of the power sector will require massive investment and funding over the next few decades and is a clearly stated priority for the new administration.

Reform of the Petroleum industry/ Passage of the Petroleum Industry Bill (PIB)

This administration appears keen to fast track reform in the petroleum industry which may involve the passage of the long awaited PIB in some form or the other. This is sure to have far reaching consequences within the industry. The banking sector is likely to benefit from renewed interest and new investments in the petroleum sector once the uncertainty surrounding the passage of the bill becomes a thing of the past.

Mining

This is an area that has a great deal of potential as we have highlighted in a separate review. The new administration has expressed a strong desire to further diversify the economy by investing in agriculture and mining. Under this new dispensation, mining is expected to be at the fore front of economic reforms with financial implications (resulting from new investment drives) that should impact positively on the banking sector;

Infrastructure development

The new administration intends to undertake the construction of up to 3,000km of superhighway and building of up to 4,800km of modern railway lines, one third to be completed by 2019 by means of public private partnership (PPP) arrangements. Mass housing is another area where major reforms are being expected under this dispensation. Outstanding mortgages currently account for 0.3% of rebased GDP compared to 31% in South Africa. As part of its housing finance programme, the Ministry of Finance aims to create a pool of long term capital at low rates through a mortgage refinancing vehicle, the Nigeria Mortgage Refinancing Company which was launched in January 2014.

Financing small to medium scale enterprises

Creating an enabling environment and the necessary financial instruments for the flow of credit to small and medium scale enterprises will be a key national objective that will have significant policy implications and is likely to create significant opportunities for the financial services industry.

Arbitration

Nigeria is home to some of the world's most respected Arbitrators and practitioners; with a number of arbitral bodies represented in the country. The Arbitration & Conciliation Act and the Arbitration Law of Lagos State are the main statutes with the Lagos Court of Arbitration at the International Centre for Arbitration and ADR as the preferred choice.

DISCLAIMER:

This legal overview is intended to provide only general, nonspecific legal information as at July 2015 and does not purport to give a legal opinion or advice on specific facts or situations. You should consult and seek legal advice from Nigerian qualified legal practitioners before engaging any matters contained in this publication.

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